APPEAL NO. 93667

This case is before us again following our remand in Texas Workers' Compensation Commission Appeal No. 93371, decided June 28, 1993. The remand was predicated upon the hearing officer's failure to make necessary findings of facts under the posture of the case which involved the issue of whether or not the respondent (claimant) deviated from his employment at the time of his automobile accident so as to take him out of the course and scope of his employment. On remand, the hearing officer made the necessary findings raised in the remand and determined that the claimant did not deviate from the course and scope of his employment and that therefore his injury is compensable. The appellant (carrier) disagrees with several of the hearing officer's findings of fact and conclusions of law and essentially urges that there is no evidence to support a finding that the claimant's travel at the time of the accident was in the furtherance of the employer's business and that the evidence supports the hearing officer's original decision that the claimant deviated from the course and scope of his employment. Claimant urges that the decision on remand be affirmed.

DECISION

Determining that the matters on remand have been properly addressed by the hearing officer and that his essential findings and conclusions are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and that they find sufficient support in the evidence, the decision is affirmed.

A discussion of the evidence in this case is set forth in our previous decision, Appeal 93371, *supra*. Very briefly, the claimant, a life insurance agent, had made a business appointment for 12:00 noon outside of his assigned area or "agency." He also planned to go to his home at sometime during the trip to check on a sick child. He left his agency at about 11:00 and stopped on his way at a carwash to have the car washed that he was driving for business purposes. After leaving the carwash he proceeded on a street that led to both the bank, where he had an appointment, and to his home when he was involved in a relatively minor automobile accident. (At a later point in the route, one would have to turn off one way to go to the bank and another way to go to the claimant's home). He stated that before he had the accident he was going to the bank. However, after the accident and after the police report was accomplished, he decided to go home to settle himself, to check on the child and to see if the appointment was still on for 12:00. A statement in evidence from the person with whom he had an appointment indicated it was initially set for 12:00 but was moved to 1:00 when that person could not get away at 12:00.

As set forth in our remand, the evidence in the case gave rise to what is commonly known as the "dual purpose" doctrine. *See* Appeal 93371, *supra*, and cases cited therein; *compare* Texas Workers' Compensation Commission Appeal No. 92026, decided March 9, 1992. TEX. LAB. CODE ANN. § 401.011(12) (1989 Act) (formerly V.A.C.S. Art. 8308-1.03(12) provides, in pertinent part, that the term course and scope of employment does not include:

(B) travel by the employee in the furtherance of the affairs or business of his employer if such travel is also in furtherance of personal or private affairs of the employee unless:

(i) the trip to the place of occurrence of the injury would have been made even had there been no personal or private affairs of the employee to be furthered by the trip; and

(ii) the trip would not have been made had there been no affairs or business of the employer to be furthered by the trip.

The hearing officer did not make any findings on these provisos in his original decision and that served as the basis for the remand. In his decision now before us, he has made the following findings:

**FINDINGS OF FACT ON REMAND**

12. Claimant's trip to the place of occurrence of the injury after reentering the direct route would have been made even if he had no intention to travel to his residence to check on his sick child.

13. Claimant's trip to the place of occurrence of the injury after reentering the direct route would not have been made if he had not had the business appointment at 12:00 noon.

15. Claimant was not deviating from the furtherance of Employer's business affairs when, after leaving the car wash and reentering onto the direct route, he was involved in the automobile accident.

As indicated, there is evidence from the testimony of the claimant, the statement of the business client and the circumstances surrounding the activity close to the incident from which the hearing officer could make the above findings. While the evidence might give rise to or equal support to inferences and conclusions different from those the fact finder deemed most reasonable, this is not a sound basis to set aside the decision. Garza v. Commercial Insurance Company of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given the evidence. Section 410.165(a) (formerly Article 8308-6.34(e)). It is his responsibility to resolve conflicts and inconsistencies in testimony and the evidence before him. Burelsmith v. Liberty Mutual Insurance Co., 568 S.W.2d 695 (Tex. Civ. App.-Amarillo 1978, no writ). Having done so, he made his findings and conclusions which placed the claimant outside the exceptions provided under Section 401.011(B) and in the course and scope of

employment. Accordingly, he determined the claimant was entitled to benefits under the 1989 Act. We do not find a sound basis to disturb his decision. Texas Workers' Compensation Commission Appeal No. 92232, decided July 20, 1992. Accordingly, the decision on remand is affirmed.

Stark O. Sanders, Jr.
Chief Appeals Judge

CONCUR:

Joe Sebesta
Appeals Judge

Gary L. Kilgore
Appeals Judge